

Cheryl R. Winn
Attorney At Law

February 2, 2004

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

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PUBLIC SERVICE
COMMISSION

Re: CAT Communications International, Inc., Complainant v.
BellSouth Telecommunications, Inc., Defendant
PSC 2004-00019

Dear Mr. Dorman:

Enclosed for filing in the above-captioned case are the original and ten (10) copies of BellSouth Telecommunications, Inc.'s Motion to Dismiss Complaint.

Very truly yours,


Cheryl R. Winn

cc: Parties of Record

Enclosure

525126

Commission direct BellSouth to cease and desist from charging or collecting "911" and other surcharges from CAT.

CAT's Complaint should be dismissed for failure to state a claim for which relief can be granted. CAT neglected to point out to the Commission Section 1.1.5 of Attachment 7 of the interconnection agreement between BellSouth and CAT which states in part that:

BellSouth will also bill CCI and CCI will be responsible for and remit to BellSouth, all charges applicable to resold services including but not limited to 911 and E911 charges, End Users common line charges, federal subscriber line charges, telecommunications relay charges (TRS), and franchise fees.

The BellSouth activity complained of by CAT is, therefore, exactly what CAT and BellSouth agreed to do in the Commission approved interconnection agreement.

Moreover, CAT's apparent contention that BellSouth's actions somehow violate the Kentucky Revised Statutes also has no foundation. Pursuant to the interconnection agreement, BellSouth collects the "911" fee from CAT, deducts the costs of administration, and remits the funds to the counties pursuant to KRS 65.760. It is apparent that CAT passes the "911" fee on to its end users. Nothing in KRS 65.760 prohibits this process and pursuant to the interconnection agreement between BellSouth and CAT, the process works the way it was intended.

Prior to the Commission's June 26, 2002 Order in Administrative Case 372, BellSouth collected and remitted telecommunications relay service ("TRS") surcharges. *See In the Matter of: Request for Proposal and Selection of a Vendor for Telecommunications Relay Service*, June 26, 2002, p. 1. In December of 2002,

BellSouth implemented the Commission's order to collect and remit the TRS surcharge only for the lines its serves on a retail basis. Accordingly, on or about December 2002, BellSouth ceased collecting the TRS surcharge from CAT pursuant to the Commission's order.

A motion to dismiss raises as a question of law whether the petition alleges sufficient facts to state a cause of action. CAT alleges BellSouth has violated Kentucky law by charging it a "911" surcharge and a telecommunications relay service surcharge. As the foregoing demonstrates, the interconnection services agreement between BellSouth and CAT and as approved by the Commission provides CAT will be responsible for and remit to BellSouth all charges applicable to resold services including the 911 surcharge. ICS, Attachment 7, 1.1.5. Pursuant to the Commission's order, BellSouth no longer collects the TRS surcharge from CAT.

WHEREFORE, BellSouth respectfully requests that the Commission grant BellSouth's Motion to Dismiss.

Respectfully submitted this 2nd day of February, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof, this 2nd day of February 2004.


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